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1

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

Second Appeal No. 503 / 2005

Single Bench

APPELLANT :
Appellant/ Defdt.

Gaya Prasad,
S/o Shri Radhe Shyam,
Aged about 45 years,
R/o Quarter No. D.M. 78,
Oampur Colony Rajgamar,
Tahsil & District- Korba (C.G.)

- Versus -

RESPONDENT/ Plaintiff :

P.R. No. 2890/08
Presented by K.K. Singh
dated 11/11/08

R. Shri Sunderman,
S/o Shri Bhagan Singh,
aged about 45 years,
Caste- Biyar, R/o Gayatri
Nagar, Rajgamar, Tahsil and
District- Korba (C.G.).

**SECOND APPEAL UNDER SECTION 100 OF THE CODE
OF CIVIL PROCEDURE, 1908.**

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

S.A.No. 503/05

मामला क्रमांक सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	<u>26-4-2006</u> Mr. K.K.Singh, learned counsel for the appellant. Mr. Anand Shukla, learned counsel for the respondent. Heard on admission. The instant appeal has been preferred by the appellant under Section 100 of the Code of Civil Procedure, as the Civil Appeal No.1-B/2005, preferred by the appellant against the judgment and decree dated 27-1-2005 passed by learned First Civil Judge Class-I, Korba, has been further dismissed by the learned District Judge, Korba vide his judgment dated 7-10-2005. The plaintiff – respondent filed a suit for recovery of Rs.35,000/-, averring that the appellant – defendant had taken the above amount on loan on 15-6-1998 and had executed a receipt in the presence of witnesses and the defendant did not repay the loan despite demands. Several written demands through letters were made by the plaintiff and ultimately a legal notice was sent, however, the defendant refused to receive the same on 15-6-2000. In his written statement, the defendant denied the averment of the plaint and denied that he took any loan from the plaintiff. He stated that the document – receipt is a forged document. He also denied that the plaintiff sent any letters demanding the loan amount or the plaintiff sent legal notice as averred in the plaint or he refused to accept a legal notice. On the basis of the pleadings of the respective parties, issues were framed and after recording statements of witnesses, the learned Civil Judge decreed the suit with the finding <i>inter</i>	

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सन् 200

- 2 -

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	<i>alia</i> that the defendant, after obtaining a loan of Rs.35,000/- from the plaintiff on 15-6-1998, had executed the receipt in favour of the plaintiff. The loan-receipt is not a forged and fabricated document and accordingly decreed the suit for a sum of Rs.35,000/- with interest at the rate of 6% from the date of institution of the suit. The appellant preferred an appeal against the judgment of the trial Court and the learned First Appellate Court dismissed the appeal and confirmed the judgment and decree passed by the trial Court. Learned counsel for the appellant has assailed the judgments of both the Courts below on the ground that both the Courts below have ignored the statements of the witnesses of the plaintiff, wherein they have admitted that the document in question was not signed by the defendant in their presence and as such both the Courts below have committed illegality by not holding the loan-receipt of Ex.P/1 to be false and fabricated, and in the aforesaid circumstances, it is contended that substantial question of law – "Whether in the facts and circumstances of the case the findings of the First Appellate Court is sustainable in the eyes of law that the Exhibit P/1 is not a false and fabricated document?" – is made out and the further substantial question of law proposed is – "Whether the Court below is justified in decreeing the suit of the plaintiff with 6% interest?" In support of the submission, learned counsel for the appellant places reliance in the matter of <u>Gwalior Ceramic and Potteries Pvt. Ltd. vs. Karamchand Thapar and Bros. Coal Sales Ltd., Gwalior, reported in 1996</u>	

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मामला क्रमांक S.A.No. 503/05 सन् 200

- 4 -

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	defendant to get the signature present on Ex.P/1 examined by the handwriting expert, however, the defendant did not take steps in that regard. Thus, after marshaling the evidence, oral and documentary, available on record, both the Courts below have recorded a finding of fact that the defendant obtained a loan of Rs.35,000/- from the plaintiff and executed the loan-receipt of Ex.P/1 in view of the same, and the document in question was not a false and fabricated document, and accordingly, decreed the suit. So far as the first substantial question of law proposed by the appellant is concerned, there is no material available on record on the basis of which both the Courts below could arrive at the conclusion that the document, Ex.P/1 was false and fabricated, as no evidence was led by the defendant to substantiate his contention in this regard and, therefore, the first substantial question of law, as proposed by the appellant, does not arise for adjudication in this appeal. In the matter of <u>Gwalior Ceramic and Potteries Pvt. Ltd. (Supra)</u>, it has been held that a document may be proved as per provisions of Sections 47 and 67 of the Evidence Act, which makes a provision with regard to the opinion as to the handwriting and which makes a provision that the document may be proved by examining a person who signed or wrote the document or by calling a person who is acquainted with the handwriting of the person who is alleged to have signed or written the document and unless the requirement of law is fulfilled, the mere statement of the handwriting expert that the document is in the	

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सन् 200

-5-

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	handwriting of the particular person is not sufficient proof under the law. In the instant case, on the basis of the statement of the plaintiff Sunderman and the attesting witnesses of the loan-receipt, both the Courts below have recorded a finding of fact that the document in question was executed by the defendant. The factum of giving loan of Rs.35,000/- by the plaintiff to the defendant has also been proved on the basis of the statements of the above witnesses. The above finding is concurrent finding of fact recorded by both the Courts below and, therefore, concurrent finding of fact cannot be questioned in the second appeal and the ratio of law laid down in the above-mentioned citation has no application in the instant case. On the aforesaid discussions, this Court is of the considered opinion that both the Courts below have not committed any illegality by decreeing the suit of the plaintiff and no substantial question of law is involved for adjudication in this second appeal. In the result, the appeal is liable to be dismissed and is accordingly dismissed at the motion stage itself. In the light of above order, M.(C.)P.No.1631/2005, an application for stay, I.A.No.2991/2005, an application under Order 41 Rule 27 of the Code of Civil Procedure, I.A.No.2992/2005, an application for urgent hearing and I.A.No.263/2006, an application for out of turn hearing, stand disposed of.	Sd/- Dhirendra Mishra Judge

Gopal

1/11/2006